

BOARD OF APPEALS CASE NO. 4964

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BEFORE THE

APPLICANT: Celebrie, Inc.,

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ZONING HEARING EXAMINER

t/a Celebrie Veterinary Hospital

REQUEST: Special Exception, variance
and interpretation for a veterinary clinic
on less than 3 acres in the B2 District;
1206-A Agora Drive, Bel Air

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 1/26/00 & 2/2/00

HEARING DATE: March 8, 2000

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Record: 1/28/00 & 2/4/00

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ZONING HEARING EXAMINER'S DECISION

The Applicant is Celebrie, Inc. t/a Celebrie Veterinary Hospital, which currently operates a veterinary facility at 12301 Belair Road in Kingsville. The Applicant requests the following:

1. Special exception approval to operate a veterinary clinic or hospital in a B2 District [Section 267-53(H)(8) of the Harford County Code];
2. An interpretation and/or a variance to allow the veterinary clinic or hospital to be conducted on a parcel less than three (3) acres [Sections 267-53(H)(8)(a) and 267-11 of the Code];
3. An interpretation and/or a variance to allow the veterinary clinic or hospital to be conducted without direct access to an arterial or collector road [Sections 267-53(H)(8)(b) and 267-11 of the Code].

The subject property is located at 1206-A Agora Drive, Bel Air in the Third Election District. The parcel is more specifically identified as Parcel No. 654, in Grid 4E, on Tax Map 41. It is located within the subdivision known as the Amyclae Business Center and is owned by Amyclae USA Limited of Washington D.C.

The Applicant seeks to enter into a lease with the owner to rent space on the subject property for use as the veterinary clinic or hospital. The parcel contains 1.04 acres, more or less and is zoned B2 Community Business District.

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Dr. Cecelia Garrett, a veterinarian and sole owner of Celebrie, Inc., appeared and testified that she has owned and operated the Celebrie Veterinary Hospital in Kingsville for the past fifteen (15) years. She is seeking to lease space in the Amyclae Business Center to operate another veterinary clinic which will function primarily as a medical-surgical facility, with no recreational boarding of animals. Dr. Garrett testified that she would employ approximately 10 employees, including a total of two veterinarians (herself and one other veterinarian). The facility would treat only small animals, including dogs, cats, and exotic pets such as rabbits and ferrets. The only animals which would be boarded overnight would be those undergoing medical treatment at the facility. Dr. Garrett noted that there would be no outdoor runs or kennels, though there would be a need for a small, grassy area outside of the building in which to walk the animals. She indicated that fencing would be placed around this area and all animal waste would be collected in containers and disposed of with the trash. Biomedical waste will be picked up by a contracted service provider and removed from the site. There would be no animals left unattended. Dr. Garrett further testified that the facility would be open from 7 a.m. to 7 p.m. and would be designed in accord with professional veterinary hospital standards, which include soundproofing requirements.

Mr. David Fritz, a real estate broker with KLMB, 100 West Road, Baltimore, appeared and testified that he has been employed as a commercial real estate broker for the past 13 years. He is currently involved with leasing the space at the Amyclae Business Center. It was Mr. Fritz's testimony that Amyclae USA owns all six lots in the Amyclae Business Center, four of which are contiguous, and that it is the intent of the owner to lease space on all of the lots for retail, office and commercial businesses. Lot 1, which is the lot involved in the current request, is intended to house a one-story medical office facility, of which Celebrie, Inc. would be one tenant. There is additional space available in that facility for other tenants. Lots 2, 3 and 4 in the Business Center are intended for retail businesses, while Lot 5 currently contains a bank and Lot 6 houses a day care center. Mr. Fritz testified that the veterinary hospital would utilize 5,000 square feet of the office building and they are currently seeking a tenant for the remaining square footage in the building. Mr. Fritz noted that it has been difficult to attract physicians or other medical personnel to the proposed medical office building because of the location of the new hospital being built on the other side of Bel Air.

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Mr. Rowan Glidden appeared to testify and was qualified as an expert in land planning, site development and landscape architecture. Mr. Glidden is currently the Director of Land Planning and Landscape Architecture for the Bel Air office of George W. Stephens, Jr. & Associates, Inc., a civil engineering and land surveying firm. Mr. Glidden testified that he was familiar with the subject property and the proposed preliminary site plan prepared by his firm. Mr. Glidden testified that the property is located in the B2 zoning district, which is considered a medium density neighborhood business center. The property is located at the northwest intersection of Routes 543 and 22, two heavily traveled roadways. It was Mr. Glidden's testimony that Amyclae and Econ Drives were designed as collector-type roads to provide direct driveway access to the commercial uses which are contained within the Amyclae Business Center and to separate the commercial uses from the residential properties located directly behind and adjacent to the Center. The business center area contains a total of nine (9) acres. He noted that although Lot 1 does not have direct driveway access to either Route 543 or Route 22, or even to Amyclae Drive, it is his opinion that granting the proposed special exception and variance requests would have no adverse impact on adjoining properties, the surrounding neighborhood or the public health, safety and welfare in general. According to Mr. Glidden, there are other veterinary clinics in operation in the county that are located within commercial shopping centers, with no associated negative impact. He testified that there would be no greater impact as a result of this use in this location than there would be in any other location within the B2 district. He indicated that the proposed clinic is consistent and compatible with surrounding uses, and well separated from the residential area. He noted that there would be approximately 220 feet between the clinic and the nearest homes and the required 10 foot buffer between the parking area and the adjacent residential lots is met and exceeded. Mr. Glidden testified that, in his opinion, the property is unique as a result of topographic differences, including the internal circulation system designed to provide access to the businesses in the Center while at the same time keeping the traffic away from the adjacent heavily traveled roads. The witness noted that he believed traffic would actually be reduced because of the internal road system servicing the commercial businesses.

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It was also Mr. Glidden's opinion that denial of the proposed requests would make it very difficult to lease the property at all. Finally, with regard to the request for the variance from the three (3) acre size requirement, Mr. Glidden testified that he believed that the acreage requirement related to veterinary hospitals that treated large animals or offered recreational pet boarding, but that such a requirement would not appear to serve any legitimate purpose for the type of veterinary facility proposed by the Applicant.

It should be noted that Mr. Richard Hutchins, property manager for J & J Industries, the management company that owns several townhouses in the adjacent residential neighborhood, appeared at the hearing on behalf of the company. While he did not testify directly, Mr. Hutchins asked numerous questions of the Applicant's expert on cross-examination, including whether the witness thought it was possible that clients bringing their dogs to the Applicant's facility would allow their pets to relieve themselves in the yards of neighboring residents and whether visiting animals might disturb neighbor's pets who are left outside on decks or lawns. Mr. Glidden responded that the Applicant proposed to do significant landscaping around the border of the property which would discourage clients from taking their animals to other areas.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified that the Department was recommending approval of the special exception based upon its determination that the Applicant can meet all applicable guidelines and standards as set forth in the Code, and based upon the fact that the nature and scale of Applicant's proposed use is appropriate to the subject parcel. Mr. McClune indicated that the Department has concluded that there would be no greater impact as a result of Applicant's proposed use at this location than there would be at any other location within the B2 zone. In addition, Mr. McClune testified that it was the Department's opinion that both variances would be required for the subject property. While it is true that the business center area totals over 8 acres, Mr. McClune noted that the Applicant's proposal only involves one parcel in that center, with other buildings and uses utilizing the other five parcels.

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As a result, the Applicant's proposed use cannot be said to meet the required minimum parcel area of at least three acres. However, Mr. McClune testified that given the nature and scale of the proposed veterinary hospital, the Department concluded that the variance to the minimum parcel area requirement was appropriate. The witness also indicated that the outside grassy area proposed for walking the animals would not be considered a "run" or "runway" under the provisions of the Code.

As to the requirement that Applicant's proposed use have direct access to an arterial or collector road, Mr. McClune testified that both the Department of Planning and Zoning and the state highway department prefer to have access from interior roads where possible when the business center format is applicable. According to Mr. McClune, the access is only 240 feet from Route 543, and the diversion of traffic into the interior roads actually helps reduce traffic on the major roadways and improves traffic flow around the business center. Accordingly, the Department recommended approval of both variances, as well as the special exception, with conditions as noted in the Staff Report.

With the exception of Mr. Hutchins, who appeared and conducted cross-examination of two of the witnesses, no one testified in opposition to Applicant's requests.

CONCLUSION:

The Applicant is requesting a special exception to operate a veterinary clinic or hospital in a B2 zone, pursuant to Section 267-53(H)(8), as well as two variances to that same section of the Code, to allow a reduction in the required minimum parcel area and a waiver of the requirement of direct access to an arterial or collector road.

While the standard format for addressing the Applicant's three requests might typically be to analyze each request separately, in this case the requests must be considered together based upon the fact that the variance requests relate directly to the Code requirements for the special exception. If the special exception is granted, it cannot be utilized at this particular location without the granting of the two requested variances as well. As a matter of record, it is the finding of the Hearing Examiner that the variances are required, as opposed to an interpretation, because the facts of the case have demonstrated that the subject parcel is approximately one acre in size (and not the total acreage for the Business Center) and the parcel does not have direct access to an arterial or collector road as designed.

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Section 267-53(H)(8) provides:

“Veterinary clinics or hospitals. These uses may be granted in the AG and B2 Districts, provided that:

- (a) A minimum parcel area of three acres is required.**
- (b) The use shall be located with direct access to an arterial or collector road.**
- (c) A buffer yard ten feet wide shall be provided between the parking area and any adjacent residential lot.**
- (d) Any runways shall be set back at least two hundred feet from any lot line.”**

In addition to the specific requirements of the Code for that particular use, as outlined above, a Special Exception may not be granted unless consideration is given to the “Limitations, Guides and Standards” set forth in Section 267-9(I) of the Code. These provisions include:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.**
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.**

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- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.”

While a special exception use is presumed to be valid, that presumption can be negated if it is determined that “neighboring properties in the general neighborhood would be adversely affected” and if the particular use is not “in harmony with the general purpose and intent of the plan.” See Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981). After findings are made as to the adverse effects which may result from the proposed use, the test for determining whether the special exception should be denied is whether there are facts and circumstances which show that the proposed use at that particular location would have adverse effects above and beyond those inherently associated with the special exception use irrespective of its location within that zoning district. In other words, would the proposed use cause more harm at that particular location than it would in another location within the same zone. Ibid.

Section 267-53(H)(8) allows a veterinary clinic or hospital to be located in a B2 Community Business District as a special exception use. The Applicant has requested a variance to subsection (a) which requires a minimum of three acres. While the subject property is only 1.04 acres in size, the uncontradicted evidence demonstrates that the variance is appropriate.

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As noted by the Department of Planning and Zoning, the property may be considered unique because it fronts on a major roadway, but has no direct access and it is part of a planned community business center with adjoining compatible business uses, surrounded in part by a residential area in the surrounding, but separated area, which will be able to utilize the services offered by the Applicant. It would appear that the three acre requirement was intended to apply to veterinary hospitals and clinics which either serviced larger animals, offered recreational boarding with necessary runs for the animals, or which were located in agricultural zones. The evidence in this case is clear that the size of this parcel is appropriate to Applicant's proposed facility which will offer no recreational boarding, contain no "runs" or "runways" and will service smaller, pet-type animals. The Applicant's proposed landscaping, fencing and overall site plan should mitigate against customers interfering with neighboring residential properties.

The Applicant's request for a variance from subsection (b), which provides that the use must be located with direct access to an arterial or collector road also appears to be appropriate. This parcel is located in a unique business center environment which has been specifically designed to direct traffic into the business center and then further into the residential neighborhood and off of the more heavily traveled roadways which intersect on both sides of the Center. The testimony of all the witnesses was clear that the internal roads which provide access to the subject parcel are in close proximity to the collector or arterial roadways and, rather than create an adverse effect, the access via the internal roads should actually provide a benefit in terms of reduced traffic load and better traffic flow to the commercial establishments and the residential community. The Applicant's proposal will provide necessary and adequate buffers from the roadways, as well as the surrounding residential areas, parking is more than adequate, and no outside runways for the animals are proposed.

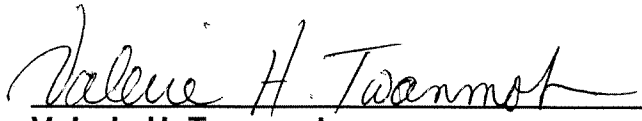
Based the testimony and the evidence provided, it is the finding of the Hearing Examiner that the special exception and the two requested variances meet the standards set forth by the Code and the courts.

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Accordingly, it is the recommendation of the Hearing Examiner that the special exception and variance requests proposed by the Applicant be approved, subject to the following conditions:

1. The Applicant shall obtain all necessary permits and inspections;
2. The Applicant shall submit a final site plan, for review and approval by the Department of Planning and Zoning, including detailed plans for the outdoor "walking" area with fencing, a proposed lighting plan for the outside area, and a landscaping plan which serves to provide additional buffers between the roadways, parking areas and neighboring residential areas;
3. Only animals receiving medical treatment shall be boarded on the site.
4. There will be no outside runs.
5. The facility shall be constructed to provide adequate soundproofing to minimize noise from animals within the facility.

Date April 12, 2000



Valerie H. Twanmoh
Zoning Hearing Examiner